

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GERARDO RAMIREZ

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 237,166

ORDER

Claimant appeals the September 1, 2000, Decision of Administrative Law Judge Pamela J. Fuller. Claimant was awarded an 8 percent impairment to the body as a whole for the injuries suffered on September 15, 1998. This matter was originally set for oral argument before the Board on February 9, 2000. However, at the request of the attorneys of record, the matter was moved to summary docket and is being decided upon the briefs presented by the parties.

APPEARANCES

Claimant appeared by his attorney, Chris A. Clements of Wichita, Kansas. Respondent appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations contained in the Decision.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Appeals Board finds that the award of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury by a series of injuries to his bilateral shoulders culminating on September 15, 1998. Respondent does not dispute the circumstances of the accident. The dispute in this instance is over claimant's functional impairment. There is no contention that claimant is entitled to a work disability as he returned to work for respondent at an accommodated position, at a comparable wage.

The Appeals Board finds that the Decision of the Administrative Law Judge sets forth findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order.

The Appeals Board finds especially convincing the report of Dirk H. Alander, M.D., the court appointed independent medical examining physician. Dr. Alander found claimant had a 6 percent impairment to each upper extremity resulting from the injuries suffered to his upper extremities including the shoulders. The Administrative Law Judge found that Dr. Alander, in converting the 6 percent upper extremity impairments, miscalculated the claimant's whole body impairment and did not properly convert the upper extremity ratings to a whole body impairment. The Appeals Board, in reviewing the mathematics of the Administrative Law Judge, concurs. A 6 percent impairment to the upper extremities converts to a 4 percent whole body impairment. When combining those using the AMA Guides to the Evaluation of Permanent Impairment conversion chart, this equates to an 8 percent impairment to the whole body, rather than the 5 percent as found by Dr. Alander.

The Appeals Board considered the opinion of C. Reiff Brown, M.D., that claimant has only a 5 percent whole body impairment and also the opinion of J. Raymundo Villanueva, M.D., that claimant has a 21 percent whole body impairment. The Appeals Board finds Dr. Brown's opinion to be less convincing than that of Dr. Alander. The Appeals Board also finds the opinion of Dr. Villanueva was formed at a time when claimant had not reached maximum medical improvement. Dr. Villanueva based his impairment upon the crepitus found in claimant's shoulders. Dr. Villanueva acknowledged that, if the crepitus that he had found in February 1999 was not present or had substantially diminished as was found by Dr. Brown in June of 1999 and also by Dr. Alander in January 2000, his impairment rating would be inappropriate. Additionally, Dr. Villanueva acknowledged that the crepitus found in claimant's right shoulder was of an intermittent nature, rather than constant as found in the left shoulder. He acknowledged that the impairment rating of 18 percent to each shoulder would not be appropriate as the shoulder with the intermittent crepitus should have had a lower impairment rating. The Appeals Board, therefore, gives Dr. Villanueva's opinion little weight.

The Appeals Board affirms the award of the Administrative Law Judge in awarding claimant an 8 percent permanent partial impairment to the body as a whole.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the award of Administrative Law Judge Pamela J. Fuller dated September 1, 2000, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director